

EXHIBIT 12

CONFIDENTIAL

In accordance with a protective order, the enclosure(s) shall be treated as confidential and shall not be shown to any person other than those persons designated in paragraph 8.2 of the paragraph order.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

CUSTODIA BANK, INC.,

Plaintiff,

vs.

No.

FEDERAL RESERVE BOARD OF

22-cv-00125-SWS

GOVERNORS and FEDERAL RESERVE

BANK OF KANSAS CITY,

Defendants.

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CONFIDENTIAL DEPOSITION OF CHRISTI

MAY-ODER, a Witness, taken on behalf of the Plaintiff
before Kelsey Robbins Schmalz, CSR No. 1571,
CCR No. 1148, RPR, pursuant to Notice on the 19th of
October, 2023, at the Federal Reserve Bank of Kansas
City, 1 Memorial Drive, Kansas City, Missouri.

1 I was in --

2 Q. Let's go both. Let's start when you
3 were with credit and risk.

4 A. I don't recall if there were any at
5 that time. It's been too many years ago.

6 Q. And you know when I say de novo
7 institution, that's something that means something to
8 you?

9 A. Yes. It means a -- from my
10 perspective, what that means is it's an institution
11 that has not been in existence or not a going
12 concern.

13 Q. When you got into the auditor role --
14 tell me how long you were in that auditor role first.

15 A. So I was in the role from 2014 to
16 2018.

17 Q. Okay. So would it be fair to say that
18 you're in -- what do you do from '07 to 2014?

19 A. So I must have been in consumer
20 affairs, then, longer, because I was only over credit
21 risk and our stats function for two to three years
22 before I moved into the AGA role.

23 Q. Okay. So you think you probably were
24 in consumer affairs until 2011 or so, then?

25 A. Yeah. It must have been, yes.

1 Q. Then you go credit risk in 2011?

2 A. Yes.

3 Q. Become auditor in 2014?

4 A. Yes.

5 Q. And you were in role until 2018?

6 A. Uh-huh.

7 Q. Correct?

8 A. That's right.

9 Q. Everybody does it. Don't worry about
10 it.

11 So from 2014 to 2018 in your auditor
12 role, were you auditing from a risk standpoint any
13 de novo institutions?

14 A. No. I don't recall.

15 Q. Tell me what happens in 2018.

16 A. In 2018, I rotated back into the
17 credit reserves and risk management function and had
18 oversight for our statistics function as well.

19 Q. What was your official title then?
20 Was that a promotion when you rotated back to that?

21 A. It was a transition as -- it was a
22 lateral rotation as assistant vice-president.

23 Q. And credit risk management has direct
24 hands-on involvement with applicants for master
25 accounts?

1 A. Yes, that's correct.

2 Q. So explain to me the hierarchy kind of
3 who reported to you in that department, and I want to
4 know who you reported to.

5 A. So initially we had two managers at
6 the time that reported to me, Chris Gaul-Pearson and
7 Lisa Klose, and during that time then Lisa retired
8 and she was replaced with Tara Botwell, and then we
9 eventually brought on a third manager, Cole Prather,
10 and so all thee of them report to me and then I
11 report to Judith Hazen.

12 Q. And at that time, was Judith Hazen
13 reporting to Tara Humston?

14 A. Yes, and I should back up, because
15 when I transitioned into credit risk it was a
16 different senior officer at that time, and so there's
17 been three or four different senior officers during
18 that time period.

19 Q. Okay. And so you take on that role in
20 2018. Is that the current role you're in?

21 A. Yes.

22 Q. So you've been in that role for the
23 last five years or so?

24 A. With the exception of -- so I no
25 longer have the statistics function. I have credit

1 and risk management, and we rolled in a new area
2 which is the reserves function.

3 Q. And tell me what the reserve function
4 is.

5 A. So the reserves function is
6 responsible for essentially paying interest on
7 reserves, making sure that the interest is paid on
8 those master accounts. We're -- also serve as a
9 backup reserves administrator where we ensure that
10 from a technical standpoint that when there are
11 changes made by our board of directors on interest
12 rates or the FLMC that those rates are accurately
13 input into our technology, into our system, so
14 interest is paid as it's been decided by the board of
15 directors and the FLMC.

16 Q. Throughout this time frame and let's
17 say by the time we get to 2018 and your transition
18 back into credit and risk, how would you describe
19 your personal, I guess, sophistication level with
20 digital currency and the trends going on in the
21 banking world?

22 MR. MICHAELSON: Objection. Form.

23 A. What exactly do you mean by that?

24 BY MR. ORTIZ:

25 Q. Well, by 2018, was the concept of

1 credit risk, that would be something that you would
2 be aware of almost immediately, true?

3 A. Yes. Yes, I became aware of it. I'm
4 not sure at what point in the process, but yes, I
5 became aware of it.

6 Q. And did you become aware at some point
7 in time that they also applied to be a member of the
8 Fed and applied for membership?

9 A. Yes, I was aware of that.

10 Q. Is that something you had any
11 oversight over?

12 A. No. I am focused on the master
13 account request, not the membership.

14 Q. So a bank like Custodia that's a
15 state-chartered bank, were there procedures in place
16 for a de novo state-chartered bank that wasn't a
17 member that wanted to apply for a master account that
18 the Kansas City Fed should have followed when they
19 applied?

20 MR. MICHAELSON: Objection. Form.

21 A. So anytime we receive a request for a
22 master account, whether it's state chartered,
23 national chartered, de novo, going concern, we have
24 procedures in place that we follow to ensure that
25 they are legally eligible, and then we have a whole

1 host of work that our condition and monitoring team
2 does to assess the risk that that institution could
3 pose to this Reserve Bank and to the financial
4 system.

5 BY MR. ORTIZ:

6 Q. And everything you just described was
7 codified in writing by the time Custodia applied in
8 October of 2020?

9 MR. MICHAELSON: Objection. Form.

10 A. Yes. We had -- so we had procedures
11 in place on how we go about conducting that risk
12 analysis.

13 BY MR. ORTIZ:

14 Q. You didn't need to go outside the
15 Kansas City Fed to find procedures as to how to deal
16 with a de novo state-chartered institution, did you?
17 You already had them set up?

18 A. We had procedures for how we go about
19 conducting our risk analysis.

20 Q. And is it your testimony today that
21 you followed the procedures you had in place when
22 Custodia submitted its application and you began
23 processing it?

24 A. I'm sorry. Do you mind repeating
25 that?

1 MR. ORTIZ: Why don't you just read it
2 back to your, Kelsey.

3 (The requested portion of the record
4 was read by the reporter.)

5 A. We followed our procedures that --
6 yes, that we had in place.

7 Q. I'm going to hand you what we will
8 mark as Exhibit 43.

9 (May-Oder Exhibit No. 43 was marked
10 for identification.)

11 BY MR. ORTIZ:

12 Q. And I'll tell you, I received this
13 yesterday from your counsel. Ms. Hazen testified
14 that there was procedures and practices that had been
15 in place but she did not think they were in writing.
16 She told me the way that I could verify the policies
17 that were followed would be to look at how they
18 had -- the Fed had handled other applicants.

19 I got this document yesterday
20 submitted from your attorneys saying no, there are
21 written procedures in place. So I want to know which
22 is it, were there written procedures in place?

23 MR. MICHAELSON: Objection. Misstates
24 prior testimony.

25 But you can answer the question.

1 MR. ORTIZ: Which part did I misstates
2 of Ms. Hazen's testimony?

3 MR. MICHAELSON: The transcript will
4 speak for itself.

5 MR. ORTIZ: I know it does.

6 MR. MICHAELSON: We don't have to get
7 into it.

8 You can go ahead and answer the
9 question.

10 BY MR. ORTIZ:

11 Q. I just want to know were these
12 practices that you followed or was it actually a
13 written procedure that you followed?

14 A. These are the -- so these were --
15 these are in writing and these are procedures that
16 our condition and monitoring team follow.

17 Q. Okay. So is Exhibit 43 -- and take a
18 minute to look at it to make sure that this is what
19 was in place and would have controlled Custodia's
20 application when they applied, okay?

21 A. Yes. These were in place at the time
22 that they applied for a master account.

23 Q. And the effective date on Exhibit 43
24 says June of 2019; is that correct?

25 A. Yes. That's what this shows.

1 like a SharePoint file where we housed those
2 documents.

3 Q. That would make sense to me, because
4 I'm assuming more than one team member would have to
5 get in and access what was going on with this
6 application?

7 A. Yes. We had a number of risk
8 specialists involved.

9 Q. And I'm assuming that someone would
10 have to be going through to make sure how are we
11 following the policy to make sure we're covering all
12 these bullet points for Custodia's application,
13 correct?

14 MR. MICHAELSON: Objection. Form.

15 A. So just to clarify, we -- so when
16 you -- when we go about conducting a review of an
17 institution's access to a master account, it is not a
18 checkbox process that we go through. It is a very
19 comprehensive, fulsome review of all the risks that
20 the entity poses, and it is -- they can be very
21 unique and different from institution to institution,
22 so it is not that we take this guidance and go
23 through and checkbox every single one of these.

24 BY MR. ORTIZ:

25 Q. Well, can we just agree you didn't

1 really follow this procedure at all for Custodia, did
2 you? You created something totally different and you
3 reached out trying to get different guidelines that
4 would apply to Custodia; isn't that really what
5 happened?

6 MR. MICHAELSON: Objection. Form.

7 A. We conducted our review for this
8 institution like we would do any other institution,
9 and that is we pull together a team of experts that
10 understand the risk and dig into the entity's
11 business plan to understand what they are trying to
12 accomplish, and so each and every entity can look
13 very, very different, and we approach it the same way
14 with every institution, but what is different are the
15 risks that each institution poses.

16 BY MR. ORTIZ:

17 Q. So are you telling me that you did not
18 follow any procedure other than this one?

19 A. We followed this procedure up until
20 the new account access guidelines were distributed,
21 and those were basically just a way to make what our
22 internal procedures that we had been following for
23 many years, making those more transparent to the
24 public so they better understand the process that we
25 go through, so what we have done for years is

1 basically the same thing that was distributed in
2 those account access guidelines that were
3 published.

4 Q. Well, those account access guidelines
5 used a tier system that put Custodia into a Tier 3
6 category. Nothing like that exists in the policies
7 that applied when Custodia submitted its account
8 application. Can we agree on that?

9 A. So for --

10 Q. That's a yes-or-no question. Do you
11 agree that there's no tier system that existed in
12 your policies that applied to Custodia when they
13 submitted their application?

14 MR. MICHAELSON: Objection. Form.
15 BY MR. ORTIZ:

16 Q. Agree?

17 A. The practice that we have done for
18 years would have been that we would have applied a
19 more stringent review of any de novo that had the
20 same type of risk profile that that institution had,
21 so while it may not have been captured in writing, it
22 would have -- our practice would not have changed at
23 all.

24 Q. Okay. So are you telling me that the
25 document in front of us, 43, has a tier system in it?

1 Are you telling me that that exists in this document
2 or are you just telling me well, that's something
3 that we had that we didn't have in writing? Which is
4 it?

5 MR. MICHAELSON: Objection. Form.

6 BY MR. ORTIZ:

7 Q. Can we agree there's nothing in the
8 document, and we'll go through it to see if you
9 really followed it for Custodia, but there's nothing
10 in this document that references a Tier 1, a Tier 2,
11 and a Tier 3 institution, is there?

[REDACTED]

19 Q. So the only way to know that would be
20 to see how you handled other de novo institutions
21 that applied for master accounts; is that right?
22 That would confirm what you're telling me, that
23 although it's not in writing, you really used a
24 different procedure?

25 MR. MICHAELSON: Objection. Form.

1 BY MR. ORTIZ:

2 Q. Is that what you're telling me?

3 A. A lot of this comes into examiner
4 judgment, so I -- so I'm sorry. Could you repeat
5 your questions?

6 MR. MICHAELSON: And you can repeat
7 the question. We've been going a little over an hour
8 so if we could take a break at a convenient point,
9 but happy for you the repeat the question and get an
10 answer before the break, if you prefer.

11 MR. ORTIZ: I forgot my question.
12 Kelsey, do you want to read it back?

13 (The requested portion of the record
14 was read by the reporter.)

15 MR. MICHAELSON: Objection. Form.

16 BY MR. ORTIZ:

17 Q. Go ahead.

18 A. We did not use a different procedure.
19 It's just the level of scrutiny and detail we have to
20 do is different.

21 Q. Okay.

22 MR. ORTIZ: Let's take -- we're
23 shooting for a seven-minute break to keep us on
24 track.

25 (Off the record.)

1 BY MR. ORTIZ:

[illegible]

1 Q. And so the Kansas City Fed already had
2 procedures in place to deal with a nonroutine
3 applicant like Custodia?

4 A. We had high-level procedures in place
5 to deal with nonroutine, yes.

[REDACTED]

[REDACTED]

20 Q. And they should all be in this point
21 share folder you referenced?

22 A. All of that information should be
23 documented in a number of different documents, yes,
24 that were on the SharePoint site.

25 Q. SharePoint.

1 A. Uh-huh.

2 Q. So what is CAMELS or CAMEL or other
3 regulatory rating? What does that mean?

4 A. So this is a rating that regulators
5 provide institutions when they go in to conduct a
6 review of their safety and soundness, so the C stands
7 for capital adequacy, asset is asset quality, M is
8 management, E is earnings, L is liquidity and then
9 the S is sensitivity.

10 Q. So does that apply to Custodia in some
11 aspect?

12 A. So that would have been -- part of the
13 review that we did would be looking at all of those
14 components.

15 Q. So I take it somewhere in the point
16 share file you described for me there should be a
17 reference as to the capital adequacy for Custodia,
18 correct?

19 A. Yes.

20 Q. There would be a reference to that
21 asset size?

22 A. So in their -- so I don't know that it
23 will be explicit to their asset quality because they
24 were not -- they are prohibited from extending
25 credit. That was part of their -- the legislation,

1 what that is.

2 Q. Well, certainly seems to be the
3 deadline to process these applications for master
4 account, doesn't it?

5 MR. MICHAELSON: Objection. Form.

6 A. I can't tell based off what I've read
7 here.

8 BY MR. ORTIZ:

9 Q. This is kind of like right in your
10 wheelhouse, though, isn't it? You're in charge with
11 all this stuff with master accounts for Custodia and
12 Kraken at the time, right? This stuff all applies to
13 what you and your team are doing on these special
14 purpose depository institutions from Wyoming,
15 correct?

16 MR. MICHAELSON: Objection. Form.

17 A. So myself and my team were heavily
18 involved in this, but there were others also involved
19 because of the --

20 BY MR. ORTIZ:

21 Q. Broader policy implications?

22 MR. MICHAELSON: Please let the
23 witness finish.

24 A. Because of the nuanced business model
25 that they were proposing.

1 BY MR. ORTIZ:

2 Q. Sorry for interrupting you, but I've
3 just heard that term so many times, broader policy
4 considerations. Is that a term of art that you
5 developed with your team or the Board of Governors
6 when dealing with Custodia?

7 A. So we're talking about a lot of --
8 we're talking about monetary policy. We're talking
9 about financial stability, so when I refer to broader
10 public policy issues, that's what is intended by some
11 of those -- by that term.

12 Q. And those subjects you just described,
13 those decisions are all made by the Board of
14 Governors, correct?

15 A. No.

16 Q. So you're saying the Kansas City Fed
17 makes the monetary policy consideration for Custodia?

18 MR. MICHAELSON: Objection. Form.

19 BY MR. ORTIZ:

20 Q. Because I'll represent to you Judith
21 Hazen told me just the opposite.

22 A. The question that was asked, the way I
23 interpreted it was that the Board makes all of those,
24 and so they are a part of that but it is a system, a
25 broader system that has input into monetary policy an

1 financial stability.

2 Q. Who makes the ultimate decision
3 on monetary policy involving a startup like
4 Custodia?

5 MR. MICHAELSON: Objection. Form.
6 BY MR. ORTIZ:

7 Q. Is it the Board of Governors or is it
8 the Kansas City Fed?

9 MR. MICHAELSON: Objection. Form.
10 Go ahead.

11 A. When we -- in evaluating Custodia's
12 request, monetary policy and financial stability were
13 part of that review that we gathered input from the
14 Board on, but that was just one of many factors that
15 we considered and by no means was the prominent
16 reason for the denial.

17 BY MR. ORTIZ:

18 Q. Ma'am, that had nothing to do with
19 what I asked you. I don't want to keep saying I move
20 to strike your answer.

21 My specific question is on the context
22 of monetary policy, that is a determination made by
23 the Board of Governors, not the Kansas City Fed,
24 correct?

25 MR. MICHAELSON: Objection. Form.

1 A. There is input. In making monetary
2 policy decisions, there is input gathered from all
3 Reserve Banks.

4 BY MR. ORTIZ:

5 Q. Ultimate decision made by the Board of
6 Governors?

7 MR. MICHAELSON: Objection. Form.

8 What decision are you talking about?

9 MR. ORTIZ: The monetary policy aspect
10 with somebody like Custodia.

11 MR. MICHAELSON: Objection. Form.

12 A. So for the monetary policy and the
13 financial stability risk considerations, we provided
14 the Board our perspective on those. We were aligned
15 in how we were thinking about it and the feedback
16 that we received from the Board, so we provided
17 feedback on both of those.

18 BY MR. ORTIZ:

19 Q. And then they make the ultimate call,
20 correct?

21 MR. MICHAELSON: Objection. Form.

22 A. The Board did not make the ultimate
23 call. It was --

24 BY MR. ORTIZ:

25 Q. I'm talking about on those policies.

1 answer. Let her complete the answer and then you can
2 move to strike.

3 MR. ORTIZ: If you want to enlarge the
4 time frame for me beyond seven hours and I'll come
5 back another time, I'll let her ramble as long as she
6 want's counsel. You choose. You choose.

7 MR. MICHAELSON: Given your comment
8 today, I'm not extending past seven hours --

9 MR. ORTIZ: Then she need to answer
10 the question I ask.

11 MR. MICHAELSON: She is.

12 MR. ORTIZ: When she goes on a
13 rambling narrative that is unrelated to my question,
14 I'm going to immediately move to strike.

15 MR. MICHAELSON: So how about this.
16 We're going to end at seven hours. You let her
17 finish the answer. You move to strike, and if you
18 win, we'll up open up the deposition again by the
19 number of minutes.

20 MR. ORTIZ: Counsel, I don't have time
21 to move to strike all --

22 BY MR. ORTIZ:

23 Q. Ma'am, just listen to my question.
24 They're easy and straightforward. They're easy and
25 straightforward.

1 So this references Tier 3. There is
2 no references to a Tier 3 in any of the existing
3 policies we went through for master account
4 applications; is there?

5 MR. MICHAELSON: Objection. Form.

6 BY MR. ORTIZ:

7 Q. That's not a term that was used in any
8 of the existing policies at the Kansas City Fed?

9 MR. MICHAELSON: Objection.

10 BY MR. ORTIZ:

11 Q. Before the new guidelines, true?

12 MR. MICHAELSON: Objection. Form.

13 A. Tier 3 is something that was applied
14 to how we had already been assessing institutions
15 such as Custodia that were in that higher risk
16 category.

17 BY MR. ORTIZ:

18 Q. Ma'am, again, move to strike. My
19 question was none of the policies that we've looked
20 that were in place used a term of Tier 3, do they;
21 yes or no?

22 A. They did not specifically identify as
23 a Tier 3, but we talked about routine versus
24 nonroutine.

25 Q. Exactly. Tier 1, Tier 2, Tier 3 were

1 all new terms of art introduced with the new account
2 guidelines that came out sometime in the spring of
3 2022, correct?

4 MR. MICHAELSON: Objection. Form.

5 BY MR. ORTIZ:

6 Q. You can answer. It's okay.

7 A. Those guidelines helped provide
8 transparency into how we have consistently --

9 MR. ORTIZ: Object. I move to strike.

10 MR. MICHAELSON: Please --

11 MR. ORTIZ: The question was --

12 MR. MICHAELSON: You have to let her
13 finish and then you can move to strike all you want.

14 MR. ORTIZ: The question was --

15 MR. MICHAELSON: What she's saying is
16 directly responsive to what --

17 MR. ORTIZ: It wasn't.

18 MR. MICHAELSON: Unless your goal here
19 is to simply --

20 MR. ORTIZ: Counsel, my goal is to get
21 straightforward answers to straight questions.

22 BY MR. ORTIZ:

23 Q. Ma'am, my question is much simpler.

24 The terminology of Tier 1, Tier 2 and Tier 3 first
25 were utilized in the account access guidelines in the

1 that Avit could trade in the secondary market an even
2 bad actors could have an implicit guarantee.

3 So the word being chosen by the Board
4 of Governors and by Esther George were being
5 coordinated and changing by the minute up until the
6 official denials, weren't they?

7 A. What I recall from this is that we
8 were just asking Ben to share what updates had been
9 made to the Board order. That's what I recall from
10 that exchange.

11 (May-Oder Exhibit No. 91 was marked
12 for identification.)

13 BY MR. ORTIZ:

14 Q. I'll hand you Exhibit 91, from Esther
15 George to you, and then at the bottom looks like to
16 be Judith Hazen to Esther George with you being
17 copied. It says, The updated memo incorporating your
18 edits is also attached for your reference. This
19 version will be shared with director of RB OPS per
20 the S Letter requirements.

21 So the S Letter changed things and
22 required you at the bank level to send all your
23 predecisional thoughts to the Board of Governors to
24 review ahead of time, didn't it?

25 MR. MICHAELSON: Objection. Form.

1 A. So the S Letter requires the Reserve
2 Bank in certain -- for certain situations to share
3 our recommendation with them.

4 BY MR. ORTIZ:

5 Q. That was never in any of the policies
6 and procedures that existed at the Federal Reserve
7 Bank of Kansas City when Custodia submitted its
8 application in October of 2020, correct?

9 MR. MICHAELSON: Objection. Form.

10 BY MR. ORTIZ:

11 Q. That's something totally new.
12 S Letter 2667, totally new requirement instituted by
13 the Board, correct?

14 MR. MICHAELSON: Objection. Form.

15 A. Our practice prior to the S Letter
16 being enacted, we would have typically engaged the
17 Board on these types of requests or activities that
18 would be considered unusual, novel, so that would
19 have been -- again, as I've stated previously, that
20 given the types of issues that we were dealing with
21 and the uniqueness around them, that is what we do
22 here in the System is we coordinate and we share
23 information across Reserve Banks with the Board of
24 Governors when we're dealing with these types of
25 issues.

1 BY MR. ORTIZ:

2 Q. If you were doing that anyway, why is
3 there a specific directive in the S Letter 2667? If
4 what you just told me is true and that's how it
5 worked anyway, you wouldn't need S Letter 2667
6 directing that you do that, would you?

7 MR. MICHAELSON: Objection. Form.

8 A. I can't speak to why they decided --

9 BY MR. ORTIZ:

10 Q. That doesn't make sense, does it? If
11 that's how you always did anyway, that you gave them
12 predecisional heads-up, they wouldn't be making that
13 new requirement with these new guidelines, would
14 they?

15 MR. MICHAELSON: Objection. Form.

16 A. I can't speculate why they issued the
17 S Letter.

18 BY MR. ORTIZ:

19 Q. Did you have the ability to comment on
20 the S Letter and provide input on that just like you
21 did the guidelines?

22 A. I had the opportunity to review the
23 draft S Letter and provide feedback.

24 Q. Did you provide feedback that said we
25 already do this anyway, we don't need it?

1 BY MR. ORTIZ:

2 Q. I'm going to hand you Exhibit 34
3 that's already in the record. Is this your
4 understanding as to what S Letter 2667 is?

5 A. Yes.

6 Q. So do you remember how long before
7 January 17th of 2023 this you were able to provide
8 your input as to what should be in this S Letter
9 2677?

10 A. I don't recall when I saw the draft.

11 Q. Was your input on this in a group
12 setting or was it like you got to review it and you
13 sent off your thoughts to someone?

14 A. I believe we worked internally in the
15 Federal Reserve Bank here at Kansas City to collect
16 feedback, but I don't recall exactly.

17 Q. So Chris Gaul-Pearson is somebody that
18 you corresponded often with, correct?

19 A. Yes. He's a manager in the credit
20 risk department.

21 Q. You supervise him?

22 A. Correct.

23 Q. You interfaced with him throughout the
24 process on master account issues, right?

25 MR. MICHAELSON: Objection. Form.

1 A. That's right.

2 BY MR. ORTIZ:

3 Q. And you ultimately shared information
4 with him about what was really going on in the
5 process, didn't you? You were open and honest with
6 him about what was really going on behind the scenes,
7 weren't you?

8 MR. MICHAELSON: Objection. Form.

9 A. He manages the department and so has
10 responsibility for helping evaluate master account
11 requests.

12 BY MR. ORTIZ:

13 Q. So you would be open and honest with
14 him about what's really going on, right? No reason
15 to be deceptive with your own team member, agree?

16 A. Right. I am open and honest with my
17 team.

18 Q. Okay. So I want to ask you look at
19 Exhibit 24. This came in yesterday. This is an
20 exchange from Gaul-Pearson to Ashle Baxter and Ben
21 McGhee regarding the Custodia memo to Esther.

22 MR. ORTIZ: Do you have it handy? Do
23 you want me to show her this copy --

24 MR. MICHAELSON: It seems to be
25 missing from the stack.

1 BY MR. ORTIZ:

2 Q. So what he says, Ben, at this time
3 I've been asked to see if you could help us make sure
4 we are not getting out of sync with the membership
5 side. We do not want to contradict one another.

6 Are you the one that gave the
7 directive to Chris Gaul-Pearson to talk to Ben about
8 this, don't contradict what the membership decision
9 is.

10 MR. MICHAELSON: Objection. Form.

11 A. So where are you seeing that?

12 BY MR. ORTIZ:

13 Q. Take a look where it says, Nancy,
14 could you add context to the capital section,
15 specifically highlighting capital issues with SPDIs
16 and Custodia in particular. If possible, could you
17 also indicate which issues are curable versus those
18 that are not or may not be curable?

19 Ben, at this time I've been asked to
20 see if you could help us make sure we're not getting
21 out of sync with the membership side. We do not want
22 to contradict one another, and there may be
23 additional asks by Judith for assistance with the
24 memo but nothing specific.

25 A. So going back to the pre-membership

1 review, so a lot of the same areas are reviewed and
2 assessed that also apply to a master account, and so
3 there is some overlap in the reviews that were being
4 done, so we wanted to make sure that our analysis of
5 those reviews were consistent.

6 Q. To be fair to you, ma'am, this is
7 specifically dealing with Custodia recommendation
8 memo, so this would have nothing to do with anything
9 other than the recommendation to Esther George
10 whether to deny or give a master account. That's the
11 only possible context of not contradicting the
12 decision on the membership side, agree?

13 MR. MICHAELSON: Objection. Form.

14 A. From my perspective, I think it was
15 more around how we were framing up the risks that
16 were applied to both and the consistency around that,
17 because in those recommendation memo that we sent to
18 Esther on the master account, it outlined all the
19 risks that Custodia posed to the Reserve Bank and to
20 the payment system.

21 BY MR. ORTIZ:

22 Q. Since I haven't been provided that, I
23 can't tell you whether that's true or not what you're
24 telling me, but I just want to know for the record,
25 you're saying this has nothing to do with not

1 contradicting the decision on whether they get
2 membership and whether they get a master account?
3 That's your testimony?

4 MR. MICHAELSON: Objection. Form.
5 Misstates her testimony. She's directly addressed
6 this. Asked and answered.

7 You can go ahead.

8 A. As I previously mentioned, the way I
9 understand this that -- I can't tell for sure, but I
10 suspect that it has more to do with the risks that
11 had been reviewed and the evaluation around those
12 risks and how those were being framed in our
13 recommendation memo.

14 Q. Who has the authority to direct Chris
15 Gaul-Pearson to do anything on these memo changes
16 other than you?

17 MR. MICHAELSON: Objection. Form.
18 BY MR. ORTIZ:

19 Q. You're his direct supervisor, aren't
20 you?

21 A. Yes, I am. So both Judith and I have
22 oversight of Chris.

23 Q. So it's either you or Judith telling
24 him to go in and -- when he says, I've been asked to
25 see if you could make sure we're not getting out of

1 sync, that's either your or Judith asking him to do
2 something, correct?

3 A. Most likely.

4 MR. ORTIZ: How much time left, boss?

5 MR. MICHAELSON: One minute. Maybe
6 two.

7 MR. ORTIZ: Counsel, we're willing to
8 adjourn the deposition today. We obviously feel
9 given the fact that I've got a hundred plus pages of
10 policies in the record that I've never even had a
11 chance to review until the lunchtime today, I think
12 we're entitled to come back and ask her about that.
13 We may incorporate that into a 30(b)(6) request as
14 well. Since we also have all these documents that we
15 just got since Friday and over the weekend, there may
16 be additional areas of inquiry for this witness, and
17 I understand you object to that request but I just
18 want the make sure that's clear on the record.

19 MR. MICHAELSON: Understood, and we do
20 object to that. I just have a few questions if
21 you're done.

22 MR. ORTIZ: Sure.

23 MR. MICHAELSON: So first I would like
24 to designate the transcript confidential, the
25 entirety of the confidential.

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EXAMINATION

BY MR. MICHAELSON:

Q. You testified earlier -- what's the name of the department in which you work?

A. I work in the credit reserves and risk management department.

Q. And what does that department do?

A. So we are responsible for overseeing the discount window, evaluating requests to master accounts, monitoring Tenth District Institutions and ensuring that there's compliance with the Board's payment system risk policy.

Q. And over the course of the day, you made reference to a different department called applications. Is there a department called applications?

A. Yes, there is.

Q. Is that department part of your department?

A. No. It's a distinct department led by another supervising officer and staffed with a number of examiners, and the work they do is very different and distinct from the work that we conduct in credit risk, so they are responsible for a lot of board-delegated responsibility, including evaluating

1 comes in, who decides whether the master account
2 request is granted or not?

3 A. It depends. I mean, typically for
4 most pretty straightforward, traditional type of
5 entities, I would approve those. For situations like
6 Custodia, that would be Esther's decision.

7 Q. And who, in fact, made the decision to
8 deny Custodia's master account request?

9 A. Esther.

10 Q. And you testified earlier you're part
11 of developing a recommendation that went up to
12 Ms. George?

13 MR. ORTIZ: They want you to turn your
14 mic on.

15 BY MR. MICHAELSON:

16 Q. You testified earlier you were part of
17 a recommendation that went up to Ms. George with
18 respect to Custodia's master account request?

19 A. Yes, I was.

20 Q. And was that recommendation to approve
21 the account or deny the account?

22 A. The recommendation was to deny the
23 account.

24 Q. When that recommendation was being
25 prepared, did you have -- what was your sense as to

1 whether Ms. George was going to follow your
2 recommendation or not?

3 A. It was my sense all along that she
4 would agree with our recommendation to deny.

5 Q. And what's the basis for that view,
6 for your sense that she was going to support denial?

7 A. So that was my sense based off
8 conversations that we had had internally with others
9 that had more direct interactions with Esther, but
10 really from very, very early in the process it was
11 leaning towards no given their risk profile and the
12 concerns that were raised regarding the business
13 model, so by the time the recommendation memo was
14 provided to Esther, there was no -- there was no
15 question whether or not she would approve that
16 recommendation to deny.

17 Q. Was there any doubt in your mind as to
18 whether she would support denial?

19 A. No. There was no doubt.

20 Q. Throughout the entirety of the
21 process, was there ever a time when you had a view
22 that Ms. George was likely to approve the master
23 account request?

24 A. No. I can't think of a time where I
25 felt like there was a lean towards approval.

1 Q. If you go back to the earlier part of
2 this time period in the months after Custodia
3 requested a master account, what do you recall
4 understanding about why Ms. George had concerns about
5 this particular request?

6 A. There were concerns around just the
7 structure of the entity. There were concerns about
8 the broader policy implications and making sure that
9 those were addressed. There were concerns around the
10 permissibility of the activities that they were
11 wanting to do. There were concerns around how the
12 capital requirements were brought about. There were
13 concerns around the resolution process or the lack
14 thereof. There were a litany of concerns that were
15 discussed and raised.

16 Q. To your knowledge -- well, and who
17 ultimately made the decision to deny the request?

18 A. Esther.

19 Q. Did Vice Chair Barr make the decision
20 to deny the request?

21 MR. ORTIZ: Let me object. Lacks
22 foundation.

23 A. No.

24 BY MR. MICHAELSON:

25 Q. Did the Board of Governors deny the

1 Custodia's request for a master account?

2 MR. ORTIZ: Let me object. Lacks
3 foundation.

4 A. No.

5 BY MR. MICHAELSON:

6 Q. To your knowledge, was there a board
7 order concerning Custodia's master account request?

8 MR. ORTIZ: Same objection.

9 A. No.

10 BY MR. MICHAELSON:

11 Q. Are you aware of any instance in which
12 feedback came from the Board that changed the
13 direction of Ms. George's thinking about Custodia's
14 master account request?

15 A. No. In fact, I felt like the feedback
16 that was provided through the S Letter, it was very
17 much aligned with what we had provided to the Board.

18 Q. Did there come a time when Ms. George
19 retired?

20 A. Yes.

21 Q. Do you recall when that happened in
22 relation to when Custodia's master account request
23 was denied?

24 A. It was sometime around that same first
25 quarter of this year.

1 Q. And are you aware of any length
2 between the timing of her retirement and the timing
3 of her denial of Custodia's master account request?

4 A. I know she had been heavily involved
5 throughout that process and just had a sense that she
6 wanted to be part of the final decision.

[REDACTED]

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15 Q. I would like to --

16 MR. ORTIZ: Did we not have a hard
17 stop?

18 MR. MICHAELSON: Yeah. I would have
19 preferred to start 30 minutes earlier. I have a few
20 more questions.

21 BY MR. MICHAELSON:

[illegible]

Row	Bar Length (approx. % of total width)
1	45
2	100
3	90
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6	95
7	100
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1 A. I'm not aware of anything else.

2 Q. Okay. And in terms of getting ready for
3 today's deposition, I know, I'm assuming you
4 focused on various procedures or reviewed
5 documents; is that fair?

6 A. So I saw this document and we met for a
7 few minutes prior to the deposition, so that was
8 my preparation.

9 Q. Okay. Was there anything that you
10 reviewed in getting ready for today that
11 refreshed your recollection in connection with
12 account opening procedures, discretion, denial,
13 anything like that?

14 A. No.

15 Q. Okay.

16 MR. ORTIZ: Give us just a minute.

17 MR. SCARBOROUGH: Can we go off the
18 record? We'll take one minute. I think we're
19 about done.

20 (Recess)

21 Q. (BY MR. SCARBOROUGH) Ma'am, if you
22 would get Exhibit 174 which was the October 21,
23 2022 Implementation Handbook, and I want to just
24 direct your attention to the back of that
25 document, Page 94, ending in Bates-stamp 8166.